



Report to the Auburn City Council

Action Item
Agenda Item No. **5**

[Signature]
City Manager's Approval

To: Mayor and City Council Members
From: Reg Murray, Senior Planner *[Signature]*
Date: April 22, 2013
Subject: Second Reading - Ordinance for Reasonable Accommodation (File 301.3(aa))

The Issue

Should the City Council hold the Second Reading to adopt an ordinance for Reasonable Accommodation which adds Sections 159.430 through 159.434 to the Auburn Municipal Code?

Recommended Motion (Approval)

Hold the Second Reading, by title only, of the ordinance for Reasonable Accommodation which adds Sections 159.430 through 159.434 to the Auburn Municipal Code.

Background/Analysis

On April 8, 2013 the Auburn City Council considered a request to adopt an ordinance for Reasonable Accommodation. The ordinance establishes an administrative process for persons with disabilities, whereby they can request exceptions to the City's code standards (e.g. for reduced yard setbacks) when the exception is necessary to address the applicant's disability.

At the hearing, the City Council adopted a Categorical Exemption for the ordinance, adopted the Findings of Fact, and also held the First Reading of the Reasonable Accommodation ordinance after making several revisions. A copy of the ordinance, which includes the Council's revisions, is provided as Exhibit A. The revisions include:

- Section 159.433.(A).2 – Adds a notification requirement when a request results in an exterior change to the property.
- Section 159.434.(A).2 – Is amended to read as follows: “The requested accommodation is necessary in both nature and extent to provide one or more individuals with a disability an equal opportunity to use and enjoy their dwelling or business property.”
- Section 159.434.(A).7 – Replaced the word “damage” with “harm.”

The Second Reading will complete the City's actions for the ordinance. The Ordinance will become effective thirty (30) days following the Second Reading.

Alternatives Available; Implications of Alternatives

1. Hold the Second Reading for the Reasonable Accommodation ordinance.
2. Amend the ordinance for Reasonable Accommodation and reintroduce the ordinance for First Reading.
3. Deny the Second Reading for the Reasonable Accommodation ordinance.

Exhibits:

- A. Reasonable Accommodation Ordinance

ORDINANCE NO. 13 - _____

AN ORDINANCE OF THE CITY OF AUBURN ADDING
SECTIONS 159.430 THROUGH 159.434 (REASONABLE ACCOMMODATION)
TO THE AUBURN MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF AUBURN HEREBY FINDS AS FOLLOWS:

- A. Whereas the City seeks to comply with the provisions of the Federal Fair Housing Act and the California Fair Employment and Housing Act to provide disabled persons reasonable accommodation as necessary to ensure equal access to dwellings and/or places of business; and,
- B. Whereas California Government Code Section 65583(c)(3) requires that the Housing Element of a General Plan include provisions which remove governmental constraints for persons with disabilities; and
- C. Whereas the Housing Element of the Auburn General Plan identifies implementation programs to promote equal housing opportunities for all persons; and,
- D. Whereas the Zoning Ordinance of the Auburn Municipal Code regulates the existing standards of the City's development code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY ORDAIN:

Section One: Chapter 159 of Title XV of the City of Auburn Municipal Code is hereby amended to add Sections 159.430 through 159.434 (Reasonable Accommodation) to read as follows:

REASONABLE ACCOMMODATION

159.430 PURPOSE.

In accordance with federal and state law, it is the policy of the city to provide disabled persons reasonable accommodations as necessary to ensure equal access to their dwelling or place of business. The purpose of this section is to provide a clear and defined process for disabled persons to make reasonable accommodation requests from existing standards in the city's development code.

159.431 REQUESTING REASONABLE ACCOMMODATION.

- (A) A disabled person or his/her representative may request reasonable accommodation relating to the city's various land use, zoning, rules, policies, practices, or procedures.

- (B) A reasonable accommodation may only be approved for the benefit of one or more individuals with a disability.
- (C) An application for a reasonable accommodation from a land use or zoning regulation, policy, or practice shall be made on a form provided by the department.
- (D) If an individual needs assistance in making the request for reasonable accommodation, or appealing a determination regarding reasonable accommodation, the Director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant or representative.
- (E) If a project for which a reasonable accommodation request is made also requires another discretionary approval, then the applicant may file the reasonable accommodation request together with the application for the other discretionary approval. The processing procedures of the discretionary approval shall govern the joint processing of both the reasonable accommodation request and the discretionary permit.
- (F) No fee will be required for a request for reasonable accommodation. If the project requires another discretionary permit and environmental review, then the prescribed fee shall be paid for that discretionary permit and environmental review.

159.432 APPLICATION REQUIREMENTS

- (A) In addition to the materials required under other applicable provisions of this code, the applicant shall submit the following information with the application:
 - 1. The applicant's name, address and telephone number.
 - 2. If not the applicant, the identity of the disabled person(s), and the applicant's relation to the disabled person(s).
 - 3. Address of the property for which the request is being made.
 - 4. The current actual use of the property.
 - 5. The specific exception or modification to this development code, or other land use or development regulation, policy, or practice requested by the applicant.
 - 6. Identification and description of the disability which is the basis for the request for reasonable accommodation. The applicant shall include current written certification of the disability and a description of the disability's effects on the individual's medical, physical or mental limitations.
 - 7. Documentation as to why the requested exception is necessary to provide the reasonable accommodation. Where appropriate, the applicant shall include a summary of any alternatives to the reasonable accommodation.
 - 8. Copies of plans, pictures, memoranda, correspondence, or background information reasonably necessary for the review authority to reach a decision regarding the need for reasonable accommodation.
 - 9. Other supportive information deemed necessary by the city to facilitate proper consideration of the request so long as any request for additional information complies with state and federal law.

159.433 REVIEWING AUTHORITY

(A) *Director's Review.*

1. Requests for reasonable accommodation shall be reviewed by the Director, if no discretionary approval is sought other than the request for reasonable accommodation.
2. Notification - If the accommodation will result in an exterior change to the property, notification shall be provided by the City to the owner(s) of the property adjacent to the property line affected by the change.
3. The Director shall issue a written decision on a request for reasonable accommodation within forty-five (45) days of the date of the application and may either approve, approve with conditions, or deny a request for reasonable accommodation in accordance with the findings set forth in Section 159.434.
4. All written determinations shall give notice of the right to appeal.
5. The Director may approve alternative reasonable accommodations which provide an equivalent level of use and enjoyment as determined by the Director or agreed upon by the applicant and the Director.
6. If necessary to reach a determination on the request for reasonable accommodation, the Director may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that the Director requests additional information, the 45-day period to issue a decision shall not include the time between the date the Director requests additional information and the date on which the applicant responds to the request.

(B) *Concurrent Review.*

1. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.
2. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the reviewing authority in compliance with the applicable review procedure for the discretionary permit.
3. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with the findings set forth in Section 159.434.
4. All written determinations shall give notice of the right to appeal.

5. The reviewing authority may approve alternative reasonable accommodations which provide an equivalent level of use and enjoyment.

(C) *Appeals.* Appeal of the determination of the approving authority on a request for reasonable accommodation shall be made in accordance with Chapter 162 of this Municipal Code.

159.434 REQUIRED FINDINGS

(A) *Findings.* The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:

1. The requested accommodation is requested by or on behalf of one or more individuals with a disability protected by federal or state law.
2. The requested accommodation is necessary in both nature and extent to provide one or more individuals with a disability an equal opportunity to use and enjoy their property.
3. The requested accommodation will not impose an undue financial or administrative burden to the city.
4. The requested accommodation will not fundamentally alter city zoning, development standards, policies, or procedures.
5. The requested accommodation will not result in a fundamental alteration of a neighborhood's character
6. The requested accommodation will not substantially undermine any express purpose of the General Plan or any applicable specific plan.
7. The requested accommodation will not, under the specific facts of a case, result in a direct threat to the health and safety of other individuals or substantial physical harm to the property of others.

Section Two: This Ordinance shall take effect thirty days following its adoption as provided by Government Code Section 36937.

Section Three: The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section Four: If any part of this Ordinance is held to be invalid, such invalidity shall not affect any other provision which reasonably can be given effect without regard to the invalid provision and, to that end, the provisions of this Ordinance are hereby declared to be severable.

DATED: _____, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular session meeting of the City Council of the City of Auburn held on the _____ day of _____ 2013 by the following vote on roll call:

Ayes:

Noes:

Absent:

Stephanie L. Snyder, City Clerk

(Page intentionally blank)